IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 120 of 1993

For Approval and Signature:

THE HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgement ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgement ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Petitioner(s)

Versus

MAHAVIR SHIP BREAKING CO. PVT. LTD. - Respondent(s)

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Appearance :

MS M.M. BHATTfor Applicant No(s).: 1.

DS AFF.NOT FILED (N) for Respondent No(s).: 1.

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CORAM :THE HON'BLE MR.JUSTICE D.A.MEHTA

MS.JUSTICE H.N.DEVANI

Date : 14/06/2005
ORAL JUDGMENT
(Per : THE HON'BLE MR.JUSTICE D.A.MEHTA)

1. On 9th March, 2005 this Court had directed service of notice by way of the public notice to be published in local daily being published from Jamnagar as the respondent – assessee was not being served by regular mode of service. The learned Standing Counsel for the applicant has placed on record affidavit of service dated 2nd April, 2005 annexing therewith public notice published in Gujarati daily "Bhoomi" and "Nobat", both on 29th March, 2005. Despite service there is no appearance on behalf of the respondent – assessee.

2. Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following two questions at the instance of Revenue under Section 256(1) of the Income-tax Act, 1961:-

(1) "Whether, the Appellate Tribunal is right in law and on facts in holding that if the unpaid sales-tax liability pertaining to the last quarter is paid within the time stipulated for filing of return under section 139(1) of provisions of section 43B cannot be made applicable ?"

(2) "Whether, the Appellate Tribunal is right in law and on facts in treating the assessee which is engaged in the business of ship breaking, as an industrial company ?"

3. Ms.M.M.Bhatt, learned Standing Counsel appearing on behalf of the applicant, has submitted that question No.1 is concluded by decision of the Hon'ble Supreme Court in case of **Allied Motors (P.) Ltd. Vs. Commissioner of Income-tax**,[1997] 224 ITR 677 (SC) and is required to be answered against Revenue. In the circumstances, applying the ratio of the said decision rendered by the Apex Court, question No.1 is answered in the affirmative i.e. in favour of the assessee and against Revenue.

4. Similarly, Ms.Bhatt has submitted that question No.2 is required to be answered against the assessee in light of decision rendered by this Court in case of **Commissioner of Income-tax Vs. Vijay Ship Breaking Corporation**, [2003] 261 ITR 113. Accordingly, question No.2 is answered in the negative i.e. in favour of Revenue and against the assessee.

5. The reference is, accordingly, disposed of. There shall be no order as to costs.

Sd/-
[D.A.MEHTA, J]

Sd/-
[H.N.DEVANI, J]

Bhavesh